

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DONALD SHARP,

Plaintiff,

v.

CV No. 21-819 JB/CG

U.S. FEDERAL PUBLIC DEFENDERS
OFFICE, et al.,

Defendants.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on Plaintiff Donald Sharp's handwritten *pro se* complaint, (Doc. 1), filed August 24, 2021. Mr. Sharp, who is in federal, pretrial custody at the Cibola County Correctional Center, alleges in his complaint that "Defendants do not adequately represent Plaintiff, thereby, denying Plaintiff the right to a fair trial and a right to due process." *Id.* at 1. Mr. Sharp seeks \$20 million in damages, including a Racketeer Influenced and Corrupt Organizations Act ("RICO") escalation penalty, immediate release, and dismissal of his criminal case. *Id.* at 2-3. The Court finds the complaint is deficient because it is not in proper form and he has not paid the \$402.00 filing fee or otherwise filed an Application to Proceed in District Court Without Prepaying Fees or Costs.

First, although Mr. Sharp states "[t]his is a RICO Act case, not a 42 U.S.C. 1983 case[.]" (Doc. 1 at 1), his allegations of violations of his rights to effective assistance of counsel, a fair trial, and due process are allegations of violations of U.S. Constitutional rights. A civil rights complaint under 42 U.S.C. § 1983 is the exclusive vehicle for vindication of substantive rights under the Constitution. *See Baker v. McCollan*, 443

U.S. 137, 144 n.3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (claims against state actors must be brought under 42 U.S.C. § 1983). As such, Mr. Sharp's filing may possibly be an attempt to assert prisoner civil rights claims under 42 U.S.C. § 1983. Mr. Sharp's filing is thus not in the proper form to assert civil rights claims.

In addition, regardless of how Mr. Sharp characterizes his claims, this is still a civil action, and under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the federal filing fee from Mr. Sharp or authorize Mr. Sharp to proceed without prepayment of the fee. Mr. Sharp has not paid the \$402.00 filing fee or submitted an application to proceed under § 1915.

Mr. Sharp must cure this deficiency within thirty (30) days from entry of this Order if he wished to pursue his claims. Mr. Sharp must include the civil action number, CV 21-00819 JB/CG on all papers he files in this proceeding. If Mr. Sharp fails to cure the deficiencies within thirty (30) days, the Court may dismiss this proceeding without further notice.

IT IS ORDERED that, by **September 27, 2021**, Mr. Sharp cure the deficiencies by (1) paying the \$402.00 filing fee or submitting an Application to Proceed in District Court Without Prepaying Fees or Costs (including the required six-month inmate account statement), and (2) filing a prisoner civil rights complaint in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to Mr. Sharp, together with a copy of this Order, (1) two copies of an Application to Proceed in District Court Without Prepaying Fees or Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with

instructions.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Carmen E. Garza", written over a horizontal line.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE